

119595

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-208302

DATE: September 27, 1982

MATTER OF: Richard T. Bible - Temporary Quarters
Subsistence Expenses for Dependent of
Employee

DIGEST:

Employee may be paid temporary quarters subsistence expenses based on son's occupancy of temporary quarters at old station where son did not move to new station with family but stayed in college dormitory in order to complete semester of study at college. Determination as to what constitutes "temporary quarters" is not susceptible of precise definition and must be decided on basis of particular facts involved and intent of parties. Although child occupied temporary quarters for extended period, lodging expenses were directly related to employee's transfer and are reimbursable.

This decision is in response to a request for an advance decision by Ms. Vera S. Fravel, Authorized Certifying Officer, Federal Mediation and Conciliation Service, Washington, D.C., as to whether Mr. Richard T. Bible, a former employee of that agency, may be reimbursed temporary quarters subsistence expenses incurred by his son in connection with his transfer from Washington, D.C., to New Orleans, Louisiana. For the reasons which follow, Mr. Bible may be reimbursed.

The facts as reported by Mr. Bible disclose that his residence at the time he was selected for transfer to New Orleans was located 1 1/4 miles from George Mason University, where his son had enrolled in August 1981 for the fall semester. It is reported that Mr. Bible's son commuted from his residence daily, occasionally walking the distance. Because of his desire to allow his son to complete the semester already in progress, Mr. Bible made arrangements for his wife and son to move into an apartment effective

October 30, 1981, which was located 5 miles from the University campus. Mr. Bible explained that the apartment was reserved for the sole purpose of allowing his wife and son to have a place to stay from which his son could commute to school and complete the semester studies, further explaining that his wife and son would join him in New Orleans at the semester's end. After Mr. Bible reported to New Orleans, he discovered that he had lung cancer and it therefore became imperative that his wife join him without further delay. Upon vacating their residence in Fairfax, Virginia, his wife made arrangements to have their son admitted to a University dormitory on an emergency basis from October 30 to December 19, 1981. Because of this change, Mr. Bible forfeited his deposit for the apartment rental he had planned for his wife and son to occupy. Mr. Bible requests that the dormitory fee for his son's housing be allowed toward his subsistence allowance in lieu of the apartment rental.

In requesting allowance, Mr. Bible points out that based on the proximity to the University of both his former residence and the apartment which he had reserved, his son had no reason to live in the dormitory. In fact, Mr. Bible notes that because his son worked part time, he did not plan nor did he desire to live in the dormitory except for the emergency situation. Further, Mr. Bible notes that his son would not even have been accepted by the University for a dormitory room at the late date involved but for the emergency conditions.

The Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR) para. 2-5.2f specifically states that "[t]he employee may occupy temporary quarters at one location while members of the immediate family occupy quarters at another location." Under this regulation temporary quarters subsistence expenses of school age children of employees who are intending to live at schools away from the rest of the immediate family may be paid notwithstanding that those children do not intend at that time to move into permanent quarters at the new official station. A temporary quarters allowance may be paid to the same extent as if they had

accompanied the family when, due to the parent's transfer, school age children necessarily occupy quarters other than those in which they intend to reside throughout a major portion of the semester or particular session of school. B-164746, August 20, 1974. Thus, the fact that Mr. Bible's son occupied temporary quarters in Virginia, while he was already in New Orleans, would not bar the employee's claim.

In addition, FTR para. 2-5.4a provides in part that "[r]eimbursement shall be only for actual subsistence expenses incurred provided these are incident to occupancy of temporary quarters and are reasonable as to amount." And FTR para. 2-5.1 states:

"Heads of agencies shall prescribe procedures for administering these provisions reasonably and equitably so that the necessity for allowing subsistence expenses and the amount of time an employee and members of his immediate family use temporary quarters is justified in connection with the employee's transfer to a new official station."

Under these two provisions, we have consistently held that the occupancy of temporary quarters must be directly related to the employee's transfer of duty station. B-179556, May 14, 1974. Thus, if Mr. Bible's son's stay in the University dormitory was solely for educational purposes, and unrelated to his need for temporary quarters, the employee would not be entitled to temporary quarters subsistence expenses for that expense. However, it is clear from the record presented by Mr. Bible that his son's stay in the University dormitory was directly related to his transfer and to his son's need to occupy temporary quarters.

Our decisions have recognized that a determination as to what constitutes "temporary quarters" is not susceptible of any precise definition and, therefore, each case must be decided on the basis of the particular facts involved. We have consistently given

B-208302

great weight to the intent of the employee as manifested by words and actions at the time the quarters in question are occupied. See 47 Comp. Gen. 84 (1976), and B-173585, September 17, 1971. Further, in connection with whether such quarters may be viewed as temporary, the fact that quarters are occupied for longer than 30 days has been held not to necessarily preclude their being considered temporary where the factors justify such a determination. In 47 Comp. Gen. 84, supra, we held the necessity of delaying the travel of an employee's family in order that the children might complete the school term at the old station to be such a factor. See also B-163043, June 18, 1968. We also note that under FTR para. 2-5.2c, temporary quarters includes any lodgings obtained from private or commercial sources.

Under the particular circumstances of this case we believe that Mr. Bible's son vacated his residence in Fairfax, Virginia, with the intent to reside only on a temporary basis in the University dormitory prior to joining his father in New Orleans.

Action on the reclaim voucher should be taken in accordance with the above.

Henry R. Can. S. C. C.
Comptroller General
of the United States